IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

MFA.No. 818 of 2000()

OPMV.1257/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

APPELLANT: PETITIONER:

SUSEELA. W/O.KUNJAPPAN,
MAROTTITHALACKAL HOUSE,
THIRUMARADY, KOOTHATTUKULAM.

BY ADV. SRI.J.JOSEPH
SMT.I.SHEELA DEVI

RESPONDENTS: RESPONDENTS:
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1. LIPINYASAN, S/O.KUNJU,
   PANACHIKKAL HOUSE,
   MULAKULAM NORTH, PIRAVOM.

2. TENNYSON, S/O.JOSEPH,
   PARAKKATTIL HOUSE,
   MULAKULAM NORTH, PIRAVOM.

3. THE NEW INDIA ASSURANCE CO. LTD.,
   MUVATTUPUZHA.

R1 AND R2 BY ADV. SRI.P.V.BABY
SMT.A.N.SANTHOSH
R3 BY ADV. SRI.LAL GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

M.F.A.NO. 818 OF 2000

Dated this the 1st day of January,2007

JUDGMENT

The appellant filed O.P.(MV) No.1257 of 1996 before the Motor Accidents Claims Tribunal, Muvattupuzha, claiming a sum of Rs.88,000/- as compensation, which was limited to Rs.75,000/-. The case of the appellant is that on 5.6.1995, while she was travelling in a jeep, bearing Registration No.KL7/F 9434, driven by the first respondent, she fell down from the vehicle and sustained injuries. It was alleged that the driver of the vehicle drove the vehicle in a rash and negligent manner and suddenly turned the vehicle to the left hand side, which was the immediate cause of the accident. In the claim petition, it is stated that after the accident the appellant was treated as an out-patient at the Medical College Hospital, Kottayam and she continued the treatment even at the time of filing the claim petition.

2. Respondents 1 and 2 before the Tribunal, who are respectively the driver and owner of the vehicle, remained exparte. The third respondent insurer contested the case. It was contended by the third respondent that the claim is not genuine and that the appellant herein was not travelling in the jeep on the relevant date. It was contended that the appellant did not sustain any injury in a motor vehicle accident as alleged. It was pointed out that though the accident allegedly occurred on 5.6.1995, the appellant was examined by the doctor only on 28.7.1995.

3. Before the Tribunal, the appellant herein was examined as PW1 and two witnesses were examined as PWs.2 and 3. Exts.A1 to A11 and Exts.B1 and B2 were marked. Ext.B2 is a complaint filed by the appellant herein against the first respondent before the Judicial Magistrate of the First Class, Muvattupuzha, alleging offences under Sections 279 and 338 of the Indian Penal Code. The complaint is dated 13.9.1995. The complaint was filed after three months of the date of

the accident. It is stated in Ext.B2 complaint that after the accident the appellant was taken to the Medical College Hospital, Kottayam by the accused and other passengers of the vehicle and that the treatment continued. The complaint was forwarded to the police under Section 156(3) of the Code of Criminal Procedure and a charge was laid. Ext.A11 is the judgment in that case wherein the first respondent herein – driver of the vehicle – was sentenced to pay fine on his pleading guilty. Ext.A3 accident register cum wound certificate would show that the appellant was examined by the doctor only on 28.7.1995 while she allegedly sustained injuries in the accident on 5.6.1995. The explanation offered by the appellant in evidence before the Tribunal is that she was undergoing treatment by an Ayurvedic Physician. She met the doctor only on 28.7.1995. PWs.2 and 3 were examined to prove the accident and to prove that she was treated by an Ayurvedic Physician. The Tribunal found that the evidence of PWs.2 and 3 cannot be relied upon as they are highly interested witnesses. It was also found

that there are material contradictions in the evidence of PWs.1 to 3 which would show that their evidence cannot be relied upon. According to PW1, immediately after the accident, she was brought to her house and the Ayurvedic Physician was called to the house and massage was done for 53 days. PW2 stated that the appellant was taken to the Ayurvedic Physician immediately after the accident and that he also accompanied the appellant to the residence of the Ayurvedic Physician. PW3 stated that the appellant was taken to her house after the accident and the Physician was brought there. It was found by the Tribunal that PWs.2 and 3 are close friends of the appellant.

4. In the claim petition as well as in Ext.B2 complaint, there is no case for the appellant that she had undergone any Ayurvedic treatment. She does not say that she ever met an Ayurvedic Physician immediately after the accident or thereafter. On the other hand, a reading of the claim petition as well as Ext.B2 complaint would show that immediately after the

accident, she was taken to the Medical College Hospital, Kottayam. If that is correct, certainly there would be documents to show that she was treated at the Medical College Hospital, Kottayam. Ext.A3 clearly proves that the appellant was examined by the doctor at the Medical College Hospital, Kottayam only on 28.7.1995, 53 days after the alleged date of accident. The evidence adduced by the appellant is contrary to the pleadings. The facts stated in the claim petition would not be correct if the evidence is accepted. Had the appellant sustained injuries as stated by her, it is hard to believe that she was not taken to the hospital immediately after the accident and she was taken to an Ayurvedic Physician. The appellant has not disclosed true facts before the Tribunal in the pleadings and evidence. The evidence adduced by the appellant and the version of the witnesses examined on her side cannot be relied on to find that the appellant sustained injuries in the accident as alleged. The Tribunal was right in coming to the conclusion that no accident as spoken to by the

appellant has occurred. There is nothing to indicate that an accident as stated by the appellant has taken place. The FIR, scene mahazar and all other connected records were made on the basis of Ext.B2 complaint. No grounds are made out for interference in the appeal.

The appeal lacks merits and it is accordingly dismissed, however, without any order as to costs.

(K.T.SANKARAN)
Judge

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K.T.SANKARAN, J.

M.F.A.NO. 818 OF 2000

JUDGMENT

1st January, 2007